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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,939	01/04/2002	Robert M. Fitzgerald	13965-043	8500

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LAW OFFICE OF CHAD C. SOLIZ, LLC
1401 SOUTH TAFT AVENUE, SUITE 202
LOVELAND, CO 80537

EXAMINER

JACKSON, BLANE J

ART UNIT	PAPER NUMBER
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2618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/038,939

Applicant(s)

FITZGERALD, ROBERT M.

Examiner

Blane J. Jackson

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 September 2006 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-64 have been considered but are moot in view of the new ground(s) of rejection. Hall is introduced to teach the broad claim language of claims 1 and 37, the telephone control is pivotally connected to one of the distal ends of the headband or configuring a telephone control and to clearly teach a hand-held configuration as presented in claim 35.

As regards the 112 rejection for claim 34, claim 34 states "less than about 7 ounces" which is not supported in the Specification. Paragraph 0034 of the Specification reads, "The headset of the instant invention . . . and in some embodiments may weight less than 7 ounces". It is suggested that "about" is deleted from the claim language.

As was clearly established in the Final Rejection filed 13 March 2006, the USC 112 rejection declared in the first office action incorrectly stated claim 1 when claim 34

Art Unit: 2618

was intended. This error was obvious and clearly sorted by the applicant in the applicant's Remarks filed 26 October 2004; consequently, the rejection is not considered new grounds for rejection and the Final Rejection stands.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The phrase "less than about" in claim 34 is a relative phrase which renders the claim indefinite. This phrase is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. Reference MPEP 2173.05(b). It is suggested that "about" is deleted from the claim language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-7, 12-15, 16, 19-26, 35-41, 45, 50, 53-56, 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637) with a view to Hall et al. (US 6,754,361).

Art Unit: 2618

As to claims 1, 37, 38, 40 and 41, Mack teaches a cordless telephone headset system and method of configuring a cordless telephone headset system for use comprising:

A headband having two distal ends (figures 1 and 2, column 3, lines 23-46 and column 4, line 61 to column 5, lines 15).

A telephone control connected to one of the distal ends of the headband (figure 8a, 11, column 8, lines 33-40, control panel (504)),

A microphone pivotally connected to the telephone control (figure 8b, column 8, lines 41-49, microphone and boom (210)).

Mack also teaches a hinge (figure 11, (1102) or the like mounted above the telephone control to form part of a folding headband for storage purposes (column 9, lines 23-31) but does not teach the telephone control is pivotally connected to one of the distal ends of the headband.

Hall teaches an ergonomic headset assembly comprising an adjustable headband (110) and an electronics housing (120), the housing is pivotally coupled to the headband which allows the electronics housing to be swung away from a user's ear, figures 1 and 8, column 1, lines 10-57 and column 5, lines 35-55. Hall further discloses an earphone speaker (128) and microphone boom (126) are typically pivotally mounted to the housing (120), column 2, lines 40-54.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the hinge of Mack with the pivotal coupled electronic housing

Art Unit: 2618

assembly of Hall to allow the electronics/ earpiece/ microphone to be swung away from a user's ear and provide additional comfort to the user.

As to claim 2, Mack teaches a cordless telephone headset system as described in claim 1 wherein the telephone control comprises a dial pad (figure 8a, column 8, lines 33-37, control panel buttons (802) used to dial a phone number).

As to claim 5, Mack teaches a cordless telephone headset system as described in claim 2 further comprising an earpiece adjacent said one of said distal ends of said headband (figure 2, column 4, line 61 to column 5, line 15, earpieces (202)).

As to claim 6, Mack teaches a cordless telephone headset system as described in claim 2 further comprising an earpiece adjacent the one of the distal ends of the headband wherein the dial pad is transversely adjacent the earpiece (figure 8a and 8b, dial pad (802) opposite earpiece (202), and to identify the headset speakers or earpiece (202): column 3, lines 47-60).

As to claim 7, Mack teaches a cordless telephone headset system as described in claim 1 further comprising a microphone boom having two distal ends wherein the microphone is positioned adjacent one of the distal ends of the boom and wherein a second distal end of the microphone boom is pivotally connected to the phone control (figure 8b, column 8, lines 41-47).

As to claims 35 and 63, Mack teaches a cordless telephone headset method and system comprising:

A headband having two distal ends (figures 1 and 2, column 3, lines 23-46 and column 4, line 61 to column 5, lines 15).

A dial pad connected to one of the distal ends of the headband (figure 8a, 11, column 8, lines 33-40, control panel buttons (802)).

Mack also teaches a hinge (figure 11, (1102) or the like mounted above the telephone control to form part of a folding headband for storage purposes (column 9, lines 17-31) but does not teach the telephone control is pivotally connected to one of the distal ends of the headband and configured to provide a hand-held configuration of said cordless telephone headset.

Hall teaches an ergonomic headset assembly comprising an adjustable headband (110) and an electronics housing (120), the housing is pivotally coupled to the headband which allows the electronics housing to be swung away from a user's ear, figures 1 and 8, column 1, lines 10-57 and column 5, lines 35-55. Hall further discloses an earphone speaker (128) and microphone boom (126) are typically pivotally mounted to the housing (120), column 2, lines 40-54. Hall discloses the electronic housing (120) may be pivoted away or detached from the headband (110) and used for communication, column 5, lines 47-66.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the simple hinge configuration of Mack with the pivotal and/ or

Art Unit: 2618

detachable electronic housing assembly of Hall to allow the electronics/ earpiece/ microphone to be moved away from the headband for alternative hand-held use by the user.

As to claims 12-15 with respect to claim 7 and claim 21 with respect to claim 1, Hall of Mack modified teaches the microphone boom and telephone control is configured to accommodate both a user left ear configuration and a user right ear configuration (figure 8, column 5, lines 34-66, the electronic housing (120) assembly is useful to the user on either ear whether pivoted away from or detached from the headband).

As to claims 16, 36 and 64 with respect to claims 12, 35 and 63, and claims 22, 50 and 53 with respect to claims 1, 48 and 37, Hall of Mack modified teaches the dial pad is pivotally configured to accommodate a hand held configuration of aid cordless telephone headset within a corresponding dial pad rotation of zero to at least 90 degrees (figure 8, column 5, lines 34-66, the electronic housing (120) assembly including the ear piece, boom mike and telephone control is useful to the user whether pivoted away from or detached from the headband).

As to claims 19 and 20 with respect to claims 2 and 1, Mack modified a plurality of input elements positionally associated with the dial pad and configured to

Art Unit: 2618

accommodate a plurality of user configurations (figure 5, 8a, operator control panel (504) for telephone or radio, column 6, lines 3-12).

As to claim 23 with respect to claims 20, 21 or 22 and claim 54 with respect to claims 52 or 53, Hall of Mack modified teaches the telephone control is pivotally configured to accommodate a user configuration within a corresponding telephone control rotation of zero to at least 90 degrees (figure 8, column 5, lines 34-66, the electronic housing (120) assembly including the ear piece, boom mike and telephone control is useful to the user whether pivoted away from or detached from the headband).

As to claims 24, 55 and 56 with respect to claims 1 and 37 of Mack modified teaches the telephone control is adjustably connected to one of the distal ends to accommodate an aligned configuration of the telephone control with the headband and a plurality of offset configurations of the telephone control with the headband (figure 8, column 5, lines 34-66, the electronic housing (120) assembly including the ear piece, boom mike and telephone control is useful to the user whether pivoted away from or detached from the headband).

As to claims 25 and 26 with respect to claim 1, Mack teaches a portable wireless portable telephone/ radio with control circuitry and an optional motorized antenna (figure 6) but does not specifically disclose a headset comprising a power source comprises a

Art Unit: 2618

battery fixedly connected to the second distal end of the headband. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to necessarily include a battery in the system of Mack to source a portable radio type device.

As to claims 39, with respect to claim 37, Mack teaches the step of configuring the microphone comprises pivotally configuring said microphone (column 8, lines 41-49).

As to claims 44 and 45 with respect to claim 39, Hall of Mack modified teaches a method of configuring a cordless telephone headset system wherein said step of pivotally configuring said microphone comprises adjustably rotating a microphone boom of said cordless telephone headset system to a user configuration within 270 or 360 degrees of rotation of said microphone boom (figure 1, column 2, lines 48-54).

As to claim 61, Mack teaches a method of configuring a cordless telephone headset system as described in claim 37 further comprising the step of providing computer capability to the cordless telephone system (figure 5, controller (502), column 6, lines 3-12).

Art Unit: 2618

Claims 3, 4, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637) and Hall et al. (US 6,754,361) in view of Poon (US 6,252,970).

As to claims 3, 4, 42 and 43, Mack modified teaches a cordless telephone headset system and method as described in claims 1 and 38 wherein said telephone control is adjustably connected to said one of said distal ends within about 180 degrees of rotation of said telephone control (Hall: figure 8) but does not teach with about 180 and 360 degrees of rotation of the telephone control.

Poon teaches a headset (100) comprising at least one speaker and microphone assembly connected to the head band by a 360 degree swivel (80) connection, figures 4-6, swivel (80), column 2, lines 33-65. Poon further teaches the headset is convertible from the user wearing a left or right-sided configuration, column 3, lines 13-34.

Since Hall of Mack modified teaches a pivoting earpiece/ microphone assembly that may be swung away from the user's ear, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the electronic housing pivot of Mack for the full range of motion as taught by Poon for reason of the user's personal preference or comfort in using the headset.

Claims 8-11, 17, 18, 46-49, 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637) and Hall et al. in view of Magnasco et al. (U.S. Patent 6,016,347).

As to claims 8-15 with respect to claim 7 and claims 46-49 with respect to claim 39, Hall of Mack modified teaches the step of pivotally configuring the microphone of the cordless telephone system but is silent as to adjustably ratcheting a microphone boom, figure 2a microphone boom (126), column 40-54.

Magnasco teaches a headset where a resilient pressing member is coupled to the housing and presses against the circular portion of the rotator element of the boom for increasing frictional resistance against rotation of the rotator element, shaft member and microphone boom (figures 1-3, column 4, lines 48-65). Since Hall teaches the microphone boom is typically pivotally mounted to the housing to facilitate comfortable positioning, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate in the headset design of Mack modified the frictional resistance or like design of Magnasco to facilitate the microphone boom in a desired position during use of the communication earpiece.

As to claims 17, 18 with respect to claim 7 and claims 51 and 52 with respect to claim 37, Mack teaches the microphone is rotated down to switch the wireless telephone to the in use or off hook condition (column 8, lines 41-49) but does not teach the microphone boom comprises a mute switch.

Magnasco teaches a headset where the rotated boom position signals the telephone control for standby mute or talk modes (figure 2, column 3, lines 25-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the microphone boom switch of Mack modified to include the additional

Art Unit: 2618

telephone control modes of Magnasco for further convenience to the user of the telephone functions.

Claims 27-32 and 57-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637) and Hall et al. (US 6,754,361) in view of Silver (U.S. Patent 4,882,745).

As to claims 27-31 with respect to claim 1 and 57-59 with respect to claim 37, Mack modified teaches a headset and a method of configuring a cordless telephone headset to be used with a base station, Mack: column 3, lines 23-46, but do not teach a base correspondingly configured to a substantially upright orientation of the headband and the telephone control.

Silver teaches a cordless headset telephone system comprising a headset and cradle or base, the base configured with a receptacle corresponding to at least a portion of the telephone control and at least a portion of a second distal end of the headband and the base receptacle is configured to hold the headband and the telephone control in a substantially upright position, figure 3 and 6, column 5, lines 6-29 and column 7, lines 36-50. Since Silver also teaches the cradle having charging contacts for the headset battery (column 1, lines 27-41), it would have been obvious to one of ordinary skill in the art at the time of the invention to identify in the base station of Mack the headset cradle of Silver so as to make the headset available to the user in a convenient manner and to provide positive positioning of the headset for connection and charging of the headset battery.

As to claim 32 with respect to claim 27, Silver of Hall modified teaches the telephonic control circuitry responsive to said telephone control and said base wherein said telephone control comprises at least a portion of said telephonic control circuitry (figure 6, column 7, lines 36-49, headset keypad (54)).

As to claim 60 with respect to claim 59, Mack does not teach a method of configuring a cordless telephone headset system comprising the step of charging a power source positioned adjacent a second distal end of the headband.

Silver teaches two battery charging contacts disposed on the headset to connect to the base when the headset is at rest on the headset cradle (column 4, lines 1-15). Even though Silver does not specify the specific location of the charging contacts, it would have been obvious to one of ordinary skill at the time of the invention to modify Mack modified with the charging contacts of Silver placed where the headset comes in contact with the base in the storage position.

Claims 33 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637), Hall (US 6,754,361) and Silver (U.S. Patent 4,882,745) and further in view of Babitch et al. (U.S. Patent 5,930,719).

As to claims 33 and 62 with respect to claim 27 and 61, Mack modified teaches a telephone headset system but does not teach the base is configured for computer compatibility.

Babitch teaches a cordless handset system where the base station includes a connection to the wireless handset, telephone network and modem communication with a desktop computer (figure 1, column 2, line 65 to column 3, line 30). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the headset telephone system of Mack modified with the advantages of a computer connection as taught by Babitch for the functionality of a diction system from headset to the desktop computer or the functionality of an audio e-mail center.

Conclusion

The prior art made of record and not relied upon but considered pertinent to applicant's disclosure includes Bergin et al. (US 5,185,807), Hall et al. (US 6,406,811), Bronnikov et al. (US 2002/0131616), Simpson et al. (US 3,014,998), Flagg (US 4,987,592), Haller et al. (US 6,295,366) and Evans et al. (US 5,604,813).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blane J. Jackson whose telephone number is (571) 272-7890. The examiner can normally be reached on Monday through Friday, 9:00 AM-6:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Eileen Jacob", is written above the date.

02/06/07